IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

NO. 78-1087

DAVID E. SIVERLING

VS.

COMMONWEALTH OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

David E. Siverling, the petitioner herein, prays that a Writ of Certiorari issue to review the Order of the Superior Court of the Commonwealth of Pennsylvania entered in the case of the Commonwealth of Pennsylvania vs. David Siverling, No. 2257, October Term, 1977, affirming judgment of sentence, on July 12, 1978.

INDEX TO BRIEF

OPINIONS BELOW

The Order of the Supreme Court of the Commonwealth of Pennsylvania is unreported and is set forth in Appendix A hereto, infra, page 6a. The judgment of Superior Court of the Superior Court of the Commonwealth of Pennsylvania is reported at 391 A.2d 700 (1978) and is set forth in Appendix A hereto, infra, page 5a. The opinion of the Court of Common Pleas of Centre County, Pennsylvania is unreported and is set forth in Appendix A hereto, infra, pages 1a-4a.

TABLE OF CITATIONS

STATUTE INVOLVED

U.S. Const. Amend. IV

JURISDICTION

The judgment of sentence of the Court of Common Pleas of Centre County, Pennsylvania, was affirmed by the Superior Court of the Commonwealth of Pennsylvania, by Order entered on July 12, 1978. The jurisdiction of this Court is invoked under U.S. Const. Art. III, §2, Cl. 2 and 28 U.S.C. §1257(3) (1977).

QUESTION PRESENTED

Was the petitioner illegally arrested and was the automobile he was driving and the contents thereof illegally seized by police officers acting without probable cause to believe that a crime had been committed or that the automobile contained fruits or evidence of a crime in violation of the petitioner's Fourth Amendment rights of freedom from unreasonable search and seizure?

STATEMENT OF THE CASE

At approximately 2:15 p.m. on a Saturday afternoon, August 27, 1976, agents of the Pennsylvania Bureau of Drug Control were gazing idly out the window of their office in the Borough of State College, Pennsylvania. They observed petitioner drive his automobile into the parking lot of a "Dutch Pantry" Restaurant across the street. The petitioner's girlfriend had used the automobile during a drug transaction three weeks earlier in another county. Petitioner was not present at the time of this earlier incident.

Petitioner parked his car next to a Volkswagen containing two people. One of the passengers got out of the Volkswagen and had a brief conversation with petitioner. Petitioner then entered the restaurant. The other person then entered petitioner's automobile. Petitioner's automobile and the Volkswagen were then driven to a "Penn Hi-Boy" Restaurant. The person driving petitioner's automobile left the automobile at the "Penn Hi-Boy" and got back into the Volkswagen. The Volkswagen was then driven away.

Approximately one and one-half hours later petitioner was picked up at the "Dutch Pantry" by a person driving a Chevrolet station wagon and driven to the location of his automobile at the "Penn Hi-Boy." The driver and petitioner got out of the Chevrolet. The driver removed an opaque green garbage bag from the petitioner's automobile. He put it on the floor of the Chevrolet behind the driver's seat and covered it with a blanket. Agents testified at the suppression hearing that they had often seen drugs packaged in green plastic bags. The size of the bag was that of approximately four shoe boxes.

The driver of the Chevrolet and petitioner then had a conversation. Petitioner took something from his pocket and gave it to the driver of the Chevrolet. Petitioner then entered the Chevrolet and the driver of the Chevrolet entered petitioner's automobile. Both started to drive off. The petitioner was placed under arrest before exiting the restaurant parking lot and the state agents took custody of the Chevrolet.

When petitioner was arrested, the person driving his automobile sped off. State agents gave chase but lost contact with him.

All of these events occurred in broad daylight on a Saturday afternoon in areas frequented by the public. No attempt was made to conceal the green garbage bag as it was transferred from one

auto to another. None of the persons with whom petitioner had contact that afternoon were known to the state agents. The agents had no prior information that a drug transaction was going to occur. The state agents were not able to see the contents of the green garbage bag and had no idea as to what it contained.

In the evening of the same day, the state agents obtained a search warrant for the Chevrolet. The warrant directed a search for and seizure of:

> "Marihuana packaging materials and other related paraphernalia. Records, books, papers, letters, etc. used in recording, translating, or facilitating the trafficking of marihuana and other controlled substances."

Petitioner filed applications for suppression of physical evidence alleging an illegal seizure and search of the vehicle operated by him. On February 22, 1977, after an evidentiary hearing the suppression motion was denied. On May 2, 1977 petitioner was tried before a judge sitting without a jury and found guilty of possession of marijuana with intent to deliver and possession of marijuana.[1] Post-trial motions for new trial and arrest of judgment were filed alleging, the illegality of the search and seizure, the denial of petitioner's applications to suppress and the admission of physical evidence at trial as error. By Order dated July 7, 1977, accompanied by opinion, (Appendix A, infra, page 4a), post verdict motions for new trial and arrest of judgment were denied at No. 1976-849, in the Court of Common Pleas of Centre County, Criminal Division.

The Superior Court affirmed the judgment in a per curium decision without opinion filed on July 12, 1978 (Appendix A, infra, page 5a).

On October 3, 1978 the Supreme Court of the Commonwealth of Pennsylvania denied petitioner's petition for allowance of appeal (Appendix A, infra, page 6a).

This petition is filed to review the Order of the Superior Court of Pennsylvania, affirming the judgment of sentence of the Court of Common Pleas of Centre County, Pennsylvania.

The judgments and Orders of the Pennsylvania trial and appellate courts are in direct conflict with the decision of the Supreme

[1]The Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, Act of April 14, 1972, P.L. 223, No. 64, §1, et seq, Purdons Pa. Stat. Ann. Tit. 35, §780-101, et seq.

Court of the United States in **Henry vs. United States**, 361 U.S. 98 (1959). The within petition is filed to request that this Honorable Court declare the continuing validity and vitality of its prior decision in **Henry** as it presently effects the interpretation of the Fourth Amendment to the Constitution of the United States of America.

The marijuana which formed the basis of petitioner's conviction for possession with intent to deliver and possession was found in the green garbage bag.

This is an appeal from the Order of the Superior Court of the Commonwealth of Pennsylvania in the case of **Commonwealth of Pennsylvania vs. David Siverling**, No. 2257, Oct. Term, 1977, affirming judgment of sentence, on July 12, 1978.

REASONS FOR GRANTING THE WRIT

ARGUMENT

THE PETITIONER WAS ILLEGALLY ARRESTED AND THE AUTOMOBILE HE WAS DRIVING AND THE CONTENTS THEREOF WERE ILLEGALLY SEIZED BY POLICE OFFICERS ACTING WITHOUT PROBABLE CAUSE TO BELIEVE THAT A CRIME HAD BEEN COMMITTED OR THAT THE AUTOMOBILE CONTAINED FRUITS OR EVIDENCE OF A CRIME IN VIOLATION OF THE PETITIONER'S FOURTH AMENDMENT RIGHTS OF FREEDOM FROM UNREASONABLE SEARCH AND SEIZURE.

There can be no question that petitioner was "arrested" the instant the police officers stopped the station wagon he was driving. The agents, by their own testimony, "stopped" the station wagon and "apprehended" him. He was subjected to a "patdown," handcuffed, and forced to enter a police vehicle at the "Penn Hi-Boy" parking lot. The officers indicated he was not free to leave. An individual is considered to be under arrest when police officers have restricted his liberty of movement. **Henry v. United States,** 361 U.S. 98 (1959).

There is also no question that the arrest was without a warrant. The arrest warrant was obtained hours after the search had been conducted.

An arrest without a warrant is lawful and constitutionally permissable only if the arresting officers have "probable cause" to make the arrest. Probable cause is said to exist where the facts and circumstances within the police officers knowledge are sufficient to warrant a prudent man in believing that a crime had been, or was being committed. **Beck v. Ohio,** 379 U.S. 89, (1964), **Commonwealth v. Reece,**437 Pa. 422, 263 A.2d 463 (1970); **Commonwealth v. Johnson,** 476 Pa. 146 354 A.2d 886 (1976). Mere suspicion or even strong reason to suspect is not adequate to support an arrest. **Henry v. United States,** supra.

Moreover, the Fourth Amendment prohibits seizures without probable cause, not just searches. The Chevrolet station wagon was seized at the time of petitioner's arrest. In **Chambers v. Maroney,** 399 U.S. 42 (1964), this Court found little difference for purposes of the Fourth Amendment between the intrusion caused by the immobilization of an automobile until a search warrant could be obtained and the immediate search of the automobile. There must be either probable cause to arrest the petitioner or probable cause to believe that the automobile contained fruits or evidence of crime at the time it was seized.

When a police officer stops a vehicle he has "seized" the vehicle and its occupants, and thus, the protections of the Fourth Amendment must be considered. **Commonwealth v. Swanger,**453 Pa. 107, 307 A.2d 875 (1973), **United States v. Ward,**488 F.2d 162 (CA9, 1973).

Certainly, all of the circumstances surrounding a transaction between citizens are to be considered in determining whether law enforcement officers have acted arbitrarily or have acted on the basis of probable cause. **Henry v. U.S.,** supra;**Commonwealth v. Lawsun,** 454, Pa. 23, 309 A.2d 391 (1973).

Henry, supra, involved a transaction in a very analogous setting. There, federal agents were investigating a recent theft from an interstate shipment of whiskey. The agents, while in the neighborhood of the theft, observed two individuals leave a tavern and enter an automobile. The agents had received information of an undisclosed nature from the employer of one of the two individuals implicating him with interstate shipments. The agents followed the vehicle, which was parked in an alley, and observed one of the two occupants leave the car, walk up to a gangway toward residential premises, and return shortly with some cartons. He placed them in the car and he and the driver drove off. The agents were unable to follow the car. But later they found it parked at the same place near the tavern. Shortly, the two individuals again left the same tavern, entered the car and drove off. The car stopped in the same alley as before. The same individual left the vehicle, walked to the same destination and returned with more cartons. From their observation point the agents could not determine the size, number or contents of the cartons. As the car drove off the agents stopped the vehicle. A search revealed the cartons to contain stolen radios. In striking down the search as without probable cause this Court noted that:

> "The fact that packages have been stolen does not make every man who carried a package subject to arrest nor the package subject to seizure. The police must have reasonable grounds to believe that the particular package

carried by the citizen is contraband. Its shape and design might at times be adequate. The weight of it and the manner in which it is carried might at times be enough. But there was nothing to indicate that the cartons here in issue probably contained liquor. The fact that they contained other contraband appeared only some hours after the arrest. What transpired at or after the time the car was stopped is, as we have said, irrelevant to the narrow issue before us. To repeat, an arrest is not justified by what the subsequent search discloses. Under our system suspicion is not enough for an officer to lay hands on a citizen. It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest." 361 U.S. at 103-104.

As **Henry** indicates, the fact that a plastic garbage bag may be used at times to transport marijuana does not make every person handling such bag subject to arrest and the bag subject to seizure. The police must have had reasonable and articulable grounds to believe the bag would contain marijuana. A suspicion, no matter how strong, does not amount to probable cause. The trial court and the Pennsylvania appellate courts have now indicated that mere suspicion does give rise to probable cause. This is error.[2]

The facts presented before this Court in the instant case do not give rise to that quantum of proof necessary to support the standards necessary to establish probable cause. The officers observed what merely appeared to be a curious exchange of automobiles. Petitioner met with two others, one of which took his car while he remained at a restaurant. His car was taken to a location some distance away and parked. Approximately one and one-half hours later he was picked up by a fourth individual and the two traveled to petitioner's vehicle. A garbage bag was taken from petitioner's car and placed in the other vehicle. A transfer of the unknown object from petitioner's to the other occurred. The companion entered petitioner's vehicle while petitioner entered the other and they began to leave the parking lot.

[2]For reasons unknown, the trial court and the Pennsylvania appellate courts were not impressed by **Henry**. No mention is made of the decision in the trial court's opinion accompanying its denial of post-trial motions, nor is there any indication that the decision was considered an appeal.

These matters were all acts that were outwardly innocent. The police had no tip or information that a drug transfer was going to occur. They could identify none of the individuals aside from petitioner. The acts occurred in broad daylight in areas occupied by the general public. There were no surreptitious exchanges. No money was seen to be transferred. Nor was there any counting of money! It was just as reasonable for the officers to believe there had been an exchange of a vehicle registration card when petitioner handed his companion an object. It was more probable for the agents to reason that he was handing his companion the keys to his car. No furtive gestures or movements were observed. The contents of the garbage bag was not examined. And the type of container, a green plastic garbage bag, as a matter of common knowledge, was of a type used commonly by the general public for a variety of different purposes and for the convenient carrying of merchandise.

Nor does the police identification of the vehicle as one being used for an unrelated drug transfer twenty-two days before the arrest, indicate a probability that a drug transfer was in progress. Even though there was an indication that the prior drug transfer involved the girlfriend of petitioner, the prior use of the vehicle did not involve petitioner and no attempt was made by the officers to link petitioner to this incident or to indicate that he had any awareness of the transaction. Automobiles are frequently loaned. Furthermore, the prior illegal use of the vehicle occurred in a different county and at a time remote from the day of the arrest. Guilt by association is unacceptable.

In short, with reference to the prior use of the vehicle, the police were relying upon stale information, concerning an incident occurring some distance from the use of the vehicle in Centre County and not shown to be related to petitioner.

Some courts have found probable cause to arrest and search where an officer sees packages or paraphernalia which are unique to illegal drug use. White powder in a small, clear glassine envelope has been called "the telltale sign of heroin". **People v. Corrado**, 22 NY 2d 308, 292 NYS 2d 748, 239 NE 2d 526 (1968); brick shaped kilos **in combination** with the odor of marijuana detected by one with experience in detecting such odors has been held to justify a search. **Fumagalli v. U.S.**, 429 F.2d 1011 (CA9, 1970), but also see, **U.S. v. Strickler**, 490 F.2d 378 (9th Cir. 1974).

In **People v. Corrado**, supra, police officers, acting on a tip that a pound of marijuana would be transferred, observed a suspect vehicle, containing three occupants, park, while one of the occupants walked to another parked car. The individual returned re-entered the vehicle and handed four opaque, manila envelopes to one of the other occupants. After a brief conversation, the individual with the envelopes handed them to his companion in the rear seat, who bent down as if to conceal the envelopes on the floor. One of the officers testified that he had never seen loose marijuana passed or sold in envelopes other than that type. The officers were found not to have probable cause to search. The court held the officers argument, relative to the significance of the type of packages, defective because the envelopes could have contained any number of non-contraband items. They sharply contrasted the envelopes seen from the type commonly used to transmit heroin, noting that the circumstances were not sufficient to raise the inference from suspicion to probable cause.

In **U.S. v. Strickler**, supra, the court found that an individual's proximity to a residence where government agents had been informed cocaine was to be sold, plus ambiguous driving activity and observations directed toward the residence by the defendant, is not sufficient probable cause for arrest of defendant or search and seizure of defendant's automobile.

In **People v. Goodo**, 304 P.2d 776 (D.C. App., Calif., 1956), police proceeded to the apartment of an individual after receiving a tip that a person had a pound of marijuana in his room. Upon arriving they observed the individual opening the door to his apartment carrying a brown paper sack. The testimony of an officer indicated that "marijuana is usually carried in bulk in this kind of sack". The individual was arrested and the sack, subsequently found to contain marijuana, was seized. In striking down the search and seizure the court noted that as a matter of common knowledge such bags are constantly used by many commercial enterprises for the convenient carrying of merchandise and that, practically every household had a supply of such bags at hand.

At times evidence of flight, coupled with other independent factors giving rise to probable cause, may be considered.

Commonwealth v. Mitchell, 222 Pa. Super Ct. 335, 295 A.2d 90 (1972).

Commonwealth v. Pegram, 450 Pa. 590, 301 A.2d 695 (1973),

Commonwealth v. Stratton, 231 Pa. Super Ct. 91, 331 A.2d 741 (1974).

The essential ambiguity of flight surfaces even more so in the present case in that it was not petitioner that fled but his companion. Little, if anything, can be attributed to this conduct. As this Court noted in **Henry v. United States**, supra:

> "What transpired at or after the time the car was stopped is, as we have said, irrelevant . . . "

The flight of petitioner's companion adds little or nothing to the question of probable cause. The companion flight occurred**after** the petitioner's arrest and after the seizure of the vehicle he was driving! Probable cause is not determined upon hindsight and upon what an intrusion or seizure reveals. (**Commonwealth v. Sellers**, 236 Pa. Super. Ct. 191, 344 A.2d 689 (1975), **Commonwealth v. Hicks**, 434 Pa. 153, 253 A.2d 276 (1969). A "bootstrap" theory may not be employed to uphold police action in the present case.

The events leading up to the transfer of the garbage bag lend little, if any, weight to the factors testified to by the agents in support of probable cause. As pointed out in**Henry**, supra, merely "suspicious" circumstances add nothing or probative value. In **Perry v. United States**, 336 F.2d 748 (CA CD, 1974), a suspected narcotics user, accompanied by his wife and cousin, was followed for twelve blocks by police who observed him stopping and talking with known addicts. Exchanges of unknown substances took place at these meetings. On one of these occasions, the defendant was stopped after a transfer occurred. The arrest was held illegal.

If the arrest was illegal, if the warrantless arrest occurred when the officers had no probable cause for an arrest, if the seizure of the automobile was improper, then nothing that occurred afterwards could make the arrest lawful or justify the search as its incident. **Rios v. United States**, 364 U.S. 253; **Wong Sun v. United States**, 391 U.S. 471. The prior illegality may not be taken advantage of. The issurance of the search warranty was a nullity.

CONCLUSION

For the reasons set forth above, petitioner, by his counsel, respectfully urges this Court to grant this Writ of Certiorari to the Superior Court of the Commonwealth of Pennsylvania.

Respectfully submitted
Robert W. Lambert
Attorney for petitioner

IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA
CRIMINAL
No. 1976 - 849
COMMONWEALTH
v.
DAVID SIVERLING
OPINION

CAMPBELL, P.J.

A fascinating criminal episode began to unfold in plain view of drug enforcement officers from their home office. A warrantless arrest resulted. Since the question of probable cause to make the arrest is involved, we must, of necessity, set forth the facts in detail.

Facts

Agent Lumpkin was at his desk in the South Hills Office Building at 2:15 P.M., August 27, 1976. He glanced out the window and observed a black Dodge "Super Bee" pull into the Dutch Pantry parking lot and park alongside a green Volkswagen occupied by two white males. The Dodge "Super Bee" was driven by the defendant, he being the only occupant. Agent Lumpkin had knowledge that the identical Dodge "Super Bee" was involved in a drug transaction in Jefferson County twenty-two days prior to the day in question. His prior investigation revealed the "Super Bee" to be owned by the defendant. He also recognized the defendant driver-owner from a photograph which he had in his possession. The Defendant exited the "Super Bee" and walked to the rear of the car. A passenger from the green Volkswagen exited and carried on a conversation with the defendant, after which the defendant walked toward the entrance of the Dutch Pantry restaurant. The white male then entered the defendant's "Super Bee," pulled from the parking lot and proceeded east on Route 322. The other white male followed in the green Volkswagen. The foregoing activities took place approximately 150 feet distant and Agent Lumpkin was aided by binoculars in making his observations.

Agent Kerr and an assistant tailed the two vehicles as they proceeded from the parking lot. All of the drug enforcement officials maintained radio contact with each other. After proceeding approximately one-half mile the "Super Bee" and green Volkswagen pulled into the Penn Hi-Boy restaurant parking lot. Agent Lumpkin, accompanied by Agent Stevens, then proceeded toward the Penn

Hi-Boy parking lot. As they did to the driver of the defendant's "Super Bee," after parking the car, exited and entered the green Volkswagen. The green Volkswagen then (with the two white males) left the Penn Hi-Boy parking lot traveling west toward the Dutch Pantry parking lot where the defendant was first observed. Agents Lumpkin and Stevens entered a parking lot opposite that of the Penn Hi- Boy restaurant and maintained surveillance of the "Super Bee" by the use of binoculars. Contact was lost with the green Volkswagen. A short time later agents observed a navy blue Chevrolet station wagon enter the Dutch Pantry parking lot and pick up the defendant. By radio communication Agents Lumpkin and Stevens were informed that the dark navy blue Chevrolet station wagon which had picked up the defendant was traveling east toward the Penn Hi-Boy restaurant. Moments later the station wagon was observed pulling into the Penn Hi-Boy parking lot. The defendant was observed exiting the car from the passenger side. At the same time the unidentified white male driver also exited, walked to the driver's side of defendant's "Super Bee," opended the door, reached in the back seat and pulled out a green opaque plastic garbage bag. He took the plastic bag to the rear driver's side of the Chevrolet station wagon, placed it on the floor and covered it with what looked like a blanket. He then returned to defendant Siverling, at which time the defendant reached in his pocket, then handed something to the unidentified white male. The white male then entered the defendant's "Super Bee" and the defendant entered the blue Chevrolet station wagon and both cars started to pull from the parking lot. The "Super Bee" exited extremely fast traveling east and the Chevrolet station wagon, operated by the defendant, was traveling west. At this point defendant Siverling was stopped by Agents Lumpkin and Stevens. While Stevens detained the defendant, Agent Lumpkin pursued the "Super Bee," but lost contact with it at Potters Mills, some thirteen miles distnat.

Both Agents Lumpkin and Kerr are experienced drug enforcement officers. They testified that they had frequently observed drugs packaged and conveyed in green garbage bags.

The enforcement officer secured a search warrant for the station wagon driven by the defendant and upon its execution the green plastic garbage bag contained five blocks of marijuana, totaling approximately eleven pounds.

We refused defendant's pre-trial motion to suppress and at a non-jury trial found the defendant guilty. Motions in arrest of judgment and for a new trial are now before us.

Discussion

When defendant was stopped he was "patted down," handcuffed and physically detained. Although he was later officially arrested we believe he was, in reality, arrested when the officers stopped him. The officers had no warrant for his arrest at that time.

Probable cause is a necessary ingredient of a lawful warrentless arrest.

The burden of demonstrating the existence of probable cause is on the Commonwealth: **Commonwealth v. Holton**, 432 Pa. 11, 247 A.2d 228 (1968).

The evidence required to establish probable cause need not amount to that required to convict . . . however, it must be more than that which gives rise to a mere suspicion: **Commonwealth v. Hill**, 237 Pa. Super. 543, 353 A.2d 870 (1975).

In determining whether or not there is reasonable and probable cause the court must take into account the totality of the circumstances facing the police officer. Because a police officer must of necessity draw upon his experience in reaching a decision to arrest, our review should, in appropriate circumstances, focus on the view of the officer with his skill and knowledge rather than that of an average citizen under similar conditions: **Commonwealth v. Norwood**, 456 Pa. 336, 319 A.2d 908 (1974).

The existence of probable cause is determined by the practical consideration of everyday life on which reasonable and prudent men, not legal technicians, act: **Commonwealth v. Everett**,234 Pa. Super. 249, 338 A.2d 662 (1975).

We have examined the facts and circumstances in minute detail and we firmly believe that the officers had probable cause to arrest the defendant. Initially the officer recognized the car as being involved in a prior drug transaction. Previously, by the license number, he determined the car to be owned by the defendant. He recognized the defendant as the driver. He allowed another person to drive it away from the first parking lot and park it in another parking lot one-half mile distant. He returns later in another car. Not the defendant but the driver of the car in which the defendant re-

turned went to the defendant's car and removed the green opaque plastic driving at the time of his arrest. The garbage bag was covered by a blanket at the time the defendant was stopped. Defendant's car, driven by his companion, fled the scene.

If the facts and circumstances preceding the defendant's arrest in this case are ever determined to be insufficient to establiish probable cause, then we can fully understc d why the public is losing respect for our criminal justice system.

This opinion is written without the aid or assistance of any Commonwealth brief.

Since we have held defendant's arrest to be lawful, the search which followed the issuance of a proper search warrant and the evidence produced at trial fully warrants defendant's conviction. We therefore enter the following.

ORDER

AND NOW, July 7, 1977, defendant's motions in arrest of judgment and for a new trial are refused; and the defendant is directed to appear for sentencing at the direction of the District Attorney.

BY THE COURT:
P.J. CAMPBELL

In the Superior Court of Pennsylvania

No. 2257 October Term, 1977

No. 714/1978

COMMONWEALTH OF PENNSYLVANIA
vs.
DAVID SIVERLING, Appelant

Appeal from the Judgment of Sentence of the Court of Common Pleas, Criminal Division, of Centre County, at No. 1976-849.

PER CURIAM: FILED JULY 12, 1978

Judgment of sentence affirmed.

PRICE, J., did not participate in the consideration or decision of this case.

Supreme Court of Pennsylvania
Eastern District

SALLY MRVOS
PROTHONOTARY

CATHERINE E. LYDEN
DEPUTY PROTHONOTARY

456 CITY HALL
PHILADELPHIA, 19107
(215) 686-3581/84

October 10, 1978

Robert W. Lambert, Esq.
942 Philadelphia Street
Indiana, Pa. 15701

Re: Commonwealth v. David Siverling, Petitioner
No. 3756 Allocatur Docket

Dear Mr. Lambert:

This is to advise you that the following Order has been endorsed on the Petition for Allowance of Appeal filed in the above-captioned matter:

"October 3, 1978
Petition denied
Per Curiam"

Very truly yours,

Sally Mrvos
Prothonotary
By Catherine E. Lyden
Deputy Prothonotary

CEL: ejh
cc: David E. Grine, Esq.